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*Attorney for Defendant Advanced Energy Industries, Inc.*

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

-----X	
THE POWER AUTHORITY OF THE STATE OF :	:
NEW YORK, ex rel. SOLAR LIBERTY ENERGY :	:
SYSTEMS, INC., :	:
	:
Plaintiff/Relator, :	Civil Action No. 1:19-cv-1542
	:
-against- :	:
	:
ADVANCED ENERGY INDUSTRIES, INC., :	<b><u>NOTICE OF REMOVAL</u></b>
	:
Defendant. :	:
-----X	

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF NEW YORK

**PLEASE TAKE NOTICE** that Defendant Advanced Energy Industries, Inc., (hereinafter “Advanced Energy”), by and through its attorney, hereby removes this action from the Supreme Court of the State of New York, County of Erie, Index No. 816076/2018 (the “State Court Action”) to the United States District Court for the Western District of New York pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. In support of removal, Advanced Energy states as follows:

1. All process, pleadings, and orders either received by Advanced Energy via service and/or publicly available on the State Court’s docket are attached to this Notice. An index of the documents filed or served in the State Court Action is attached hereto as **Exhibit A**. The

documents are attached hereto at **Exhibits B through M**. Certain documents on the State Court's docket are not included herein because they are not publicly available and have not been served on Advanced Energy.

2. Defendant Advanced Energy is a Delaware corporation with its principal place of business at 1625 Sharp Point Drive, in the City of Fort Collins, State of Colorado. *See* Amended Complaint at ¶ 3, *Power Auth. ex rel. Solar Liberty Energy Sys., Inc. v. Advanced Energy Indus., Inc.*, Index No. 816076/2018 (N.Y. Sup. Oct. 23, 2018). The Amended Complaint is attached hereto as **Exhibit B**.

3. Relator Solar Liberty Energy Systems, Inc. ("Relator" or Solar Liberty") is a New York corporation with its principal place of business at 6500 Sheridan Drive, Suite 120, in the Town of Amherst, County of Erie, State of New York. *See* Ex. B at ¶ 2.

4. Relator purports to bring this *qui tam* action on behalf of the Power Authority of the State of New York ("Power Authority"). The Power Authority is "a political subdivision of the state," N.Y. Pub. Auth. Law § 1002 (McKinney), and it is "a fiscally independent public corporation that does not receive State funds or tax revenues or credits," New York Power Authority Financial Report, December 31, 2018 and 2017, *available at* <https://www.nypa.gov/-/media/nypa/documents/document-library/financials/2018-nypa-finance-report.pdf> (last accessed Nov. 13, 2019).

5. Relator instituted the State Court Action by filing a Summons and Complaint. The original Complaint remains under seal by order of the State Court, and Advanced Energy has not received a copy of it. Relator's Amended Complaint was unsealed via State Court order on October 11, 2019, and Relator served its Amended Complaint on Advanced Energy in Colorado on October 16, 2019.

6. Among other relief sought, the Amended Complaint seeks an amount of three times the amount of all damages suffered by the Power Authority and/or the Relator. *See* Ex. B at p. 14. Relator claims damages of “well over one million dollars.” *Id.* at ¶ 52.

7. As the foregoing reflects, this action could have been filed originally in this Court pursuant to 28 U.S.C. § 1332 in that it is a civil action where the matter in controversy exceeds the sum or value of \$75,000 and is between citizens of different states.

8. Because this Notice of Removal is filed within thirty days of service of the Summons and Amended Complaint (the original Complaint is sealed and was never served) upon the Defendant, it is timely under 28 U.S.C. § 1446 (b).

9. Pursuant to 28 U.S.C. § 1441 (a) venue is proper in this Court because it is the district court for the district and division embracing the place where the State Court Action is pending.

10. Based on the foregoing, removal is proper pursuant to 28 U.S.C. §§ 1332 and 1441(a).

11. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will also be filed with the Clerk of the Supreme Court of the State of New York, Erie County. A copy, without exhibits, is attached hereto as **Exhibit N.**

12. The undersigned is counsel for Advanced Energy and is duly authorized to effect removal on its behalf.

13. In filing this Notice of Removal, Advanced Energy does not waive, and expressly reserves, any defense that may be available to it.

WHEREFORE, Advanced Energy respectfully requests that this action be removed from the Supreme Court of the State of New York, Erie County, and that this Court take jurisdiction over further proceedings.

Dated: New York, New York

November 15, 2019

/s/ Sara P. Madavo

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*Attorney for Defendant Advanced Energy  
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**CERTIFICATE OF SERVICE**

I hereby certify that on November 15, 2019, I caused to be served a copy of Advanced Energy Industries, Inc.'s Notice of Removal to all other counsel of record via overnight mail:

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